

REMARKS

In an Office Action dated 28 December 2005, all pending claims 1-35 are rejected on prior art grounds and claims 4-25 are further objected to for being in improper form. In reply, Applicant submits the present Response with Amendments and Remarks. The Examiner's various rejections and objections are now addressed in turn.

Claims 4-35 are objected to under 35 C.F.R. §1.75(c) as being in improper multiple dependent claim form. Herein, claims 4-33 and 35 are revised to remove multiple dependencies. Thus, the objection regarding multiple dependent form is now rendered moot; withdrawal thereof is respectfully requested. All of claims 1-35 are revised to remove reference numerals.

Claims 1-35 are rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 6,671,078 to Flanders. With reference to Figures 4A and 4B of the reference, the Examiner contends that Flanders discloses a micro light modulator which acts as a controllable shutter. However, for all of the additional limitations of claims 1-35, the Examiner simply states that such limitations are design choices that one skilled in the art would make. Concerning claim 1, the Examiner states,

"Flanders et al disclose in figs. 4A and 4B a micro light modulator that is acting as a controllable shutter, but there is no showing in the light path a translucent modulator substrate and that the substrate has the controllable shutter anchored to it..., however, this is a design choice that one skilled in the art would make depending on the optical path needed [f]or saving manufacturing steps of making a hole in the substrate." Office Action, page 2.

Thus, here the Examiner relies on alleged common knowledge to account for the above referenced limitations of claim 1 and for all of the remaining limitations of claims 2-35. "In limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or to rely on "common knowledge" in making a rejection, however such rejections should be judiciously applied." MPEP 2144.03.

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). General conclusions concerning what is “basic knowledge” or common sense to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection. *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1962 (Fed. Cir. 2001).

Claim 1 recites a micro modulator arrangement comprising, *inter alia*, a light transmission path and a controllable shutter arranged for modulation of light transmitted via the light transmission path, where at least a part of the light transmission path comprises a translucent modulator substrate, and where this part of the light transmission path is an integral part of a substrate to which the at least one controllable shutter is anchored.

These features are not disclosed by Flanders. Instead, the reference teaches a zipper actuator bean switching system 100 consisting of a cantilevered bean structure 112 supported on a substrate at a base 113, where the structure 112 includes a paddle 114 at its cantilevered end for controlling an optical signal propagating through an optical port region 116. Col. 3, line 59 – col. 4, line 14. The optical port region 116 comprises a hole that extends through the substrate. *Id.*, and Figs. 2, 8A, and 8B.

Clearly, Flanders does not teach or suggest, “at least a part of said light transmission path comprising a translucent modulator substrate; and said at least part of said light transmission path being an integral part of a substrate to which said at least one controllable shutter is anchored”, as recited in claim 1. Moreover, these limitations of the claim are not of instant and unquestionable demonstration as being well-known. Without specific factual findings nor concrete evidence in the record to support the Examiner’s conclusion that these limitations are mere common knowledge design choices, the obviousness rejection of claim 1 is improper and may not be maintained. *In re Zurko*

(citation above). Accordingly, reconsideration and withdrawal of the §103 rejection of claim 1 is respectfully requested.

Claims 2-32 are rejected as being obvious in view of Flanders. However, these claims variously depend from non-obvious claim 1 and are thus correspondingly non-obvious; reconsideration and withdrawal of the respective §103 rejections is requested.

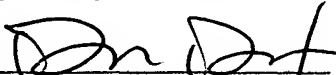
Claim 33 is amended herein to be placed in independent form. The claim recites a sealing arrangement comprising a micro-light modulator including many of the limitations of claim 1. Thus, for at least the reasons set forth above with respect to claim 1, Applicant submits that claim 33 is non-obvious with respect to Flanders.

Claims 34-35 are herein amended to depend from independent non-obvious claim 33. Accordingly, claims 34-35 are correspondingly non-obvious; reconsideration and withdrawal of the respective §103 rejections is requested.

Applicant believes that all of the outstanding objections and rejections have been addressed herein and are now overcome. Entry and consideration hereof and prompt issuance of a Notice of Allowance are respectfully requested.

The Office is invited to contact applicant's attorneys at the below-listed telephone number concerning this Amendment or otherwise regarding the present application. If there are any charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

Respectfully submitted,

By: 

Daniel F. Drexler
Registration No. 47,535
CANTOR COLBURN LLP
55 Griffin Road South
Bloomfield, CT 06002
Telephone: 860-286-2929
Facsimile: 860-286-0115
Customer No. 23413

Date: 27 June 2006